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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,860	01/09/2002	Dion Ivo De Roo	47161-00019USPT 5317  EXAMINER	
30223 75	90 08/25/2005			
JENKENS & GILCHRIST, P.C.			ENSEY, BRIAN	
225 WEST WASHINGTON SUITE 2600			ART UNIT	PAPER NUMBER
CHICAGO, IL	60606		2646	
			DATE MAILED: 08/25/200	•

Please find below and/or attached an Office communication concerning this application or proceeding.

## Disposition of Claims  ### Claim(s)		Application No.	Applicant(s)				
## Examiner ## Draw MAILING DATE of this communication appears on the cover sheat with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Eleteration of time may be available under the provisions of 37 CFR 1.13(a). In no event, however, may a roph be timely filed where \$100 (sp. WOMTH's from the mailing date of this communication.  If NO period for reply is predicted above, the environmentation of the provisions of 37 CFR 1.13(a). In no event, however, may a roph be timely filed where \$10 (sp. WOMTH's from the mailing date of this communication.  If NO period for reply is predicted above, the environmentation of the specified to be town advanced period for reply is predicted period for reply in predicted period for reply is patient, equate the application to the mailing date of this communication.  Failure to reply with the east or extend period for reply (sp. \$10 (sp. \$1	•						
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ½ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 37 CFR 1.136(s). In no event, however, may a reply be timely filled  If the period for may be period above, the maximum statutory protect will apply and will expire Six (6) MONTHS from the mailtag date of this communication. If the period for may be specified above, the maximum statutory protect will apply and will expire Six (6) MONTHS from the mailtag date of this communication. For the mailtage of the communication of the period by the Cfts is certificated by the Cfts is certificated. See 37 CFR 1.704(s).  Status  1) See Responsive to communication(s) filed on @9 January 2002.  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1.57 is/are pending in the application.  4a) Of the above claim(s) is/are epicted.  7) Claim(s) is/are rejected.  7) Claim(s) is/are rejected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The providing of filed on is/are: a) accepted or b) objected to by the Examiner.  Application Papers of the providing the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  3) Certified copies of the priorit	The MAILING DATE of this communication app						
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	Attachment(s)						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date.							
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  Paper No(s)/Mail Date  5) Notice of Informal Patent Application (PTO-152)  6) Other:	3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) 🔲 Notice of Informal P					

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## **DETAILED ACTION**

#### Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Claims 1-48, drawn to a directional microphone, classified in class 381, subclass
 356.

II. Claims 49-57, drawn to a listening device, classified in class 381, subclass 313.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and that the subcombination has utility by itself or in other combinations. The subcombination has separate utility such as a directional microphone in an audio recording system, a hearing aid, a voice recognition system, etc..

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention:

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Species I: Figures 3 and 4 read on the device employing an external wind noise suppression channel/tube.

Species II: Figure 5 reads on the device employing an internal wind noise suppression tube.

Species III: Figure 10 reads on the device employing a mounting plate molded to form a wind noise suppression conduit.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Justin Swindells on 08/18/05 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 571-272-7496. The examiner can normally be reached on Monday - Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

# Any response to this action should be mailed to:

Commissioner of Patents and Trademarks Washington, D.C. 20231

## Or faxed to:

(571) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to: Customer Service Window, Randolph Building, 401 Dulany Street, Arlington, VA 22314

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**BKE** 

August 18, 2005

SUHAN MI PRIMARY EXAMPLES